IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6621 of 2001

For Approval and Signature:

Hon'ble MR.JUSTICE A.L.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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PARUL @ PARVATIBEN WIDOW OF AMBALAL MAGANBHAI MENA (LODHA)
Versus
COMMISSIONER OF POLICE

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Appearance:
1. Special Civil Application No. 6621 of 2001
MR CHETAN B RAVAL for Petitioner No. 1

MR D.P. JOSHI, AGP for Respondent State

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CORAM : MR.JUSTICE A.L.DAVE

Date of decision: 10/01/2002

ORAL JUDGEMENT

The petitioner came to be detained by virtue of an order dated 26th July, 2001 passed by the Commissioner

of Police, Ahmedabad City, Ahmedabad in exercise of power under Section 3 of the PASA Act. The petitioner seeks to challenge the said order by this petition under Article 226 of the of Constitution of India.

2. The grounds of detention indicate that the petitioner has been branded as a boot-legger. The detaining authority has considered four registered offences against the detenu under the Bombay Prohibition Act. The detaining authority has also considered statements of two anonymous witnesses and recorded a satisfaction that powers under Section 9(2) of the Act are required to be exercised in larger public interest. The detaining authority recorded a satisfaction that the petitioner is required to be immediately prevented from pursuing his illegal and anti-social activities and resorting to less drastic remedy under ordinary law is not possible as immediate prevention is necessary and therefore, passed the order in exercise of powers under Section 3 of the PASA Act.

3. Learned Advocate Mr. Raval submitted that last registered offence is of 14.4.2001, whereas the order is passed on 26.7.2001 i.e. after a period of more than 3 months and 12 days and the live-link between the activity of the petitioner and the order is snapped. The second fold of contention of Mr. Raval is that the detaining authority has exercised the power under Section 9(2) of with-holding the name of the anonymous witnesses without any basis. He submitted that the satisfaction recorded by the detaining authority about the genuineness and correctness of the fear expressed by the witnesses qua the detenu is recorded without undertaking proper exercise. The verification is done in a mechanican manner as a formality. The exercise of power therefore has infringed the right of the petitioner guaranteed under Article 22(5) of the Constitution of India and the continued detention of the detenu therefore would be illegal. He therefore urged that the petition may be allowed and the impugned order may be quashed and set aside.

4. Learned AGP Mr. D.P. Joshi has opposed this petition.

5. Having regard to the contentions raised, at the out-set it would be noted that there is no material to indicate that the detaining authority has undertaken proper exercise of verification of the fear expressed by the anonymous witnesses qua the detenu and its genuineness. There is nothing to indicate that any

exercise except calling the witnesses was undertaken by the authority. As observed by this Court in Bai Amina w/o Ibrahim Abdul Rahim Alla Vs. State of Gujarat, reported in 1981 GLR 1186, the authority is expected to consider the general background, character, antecedents, criminal tendency or propensity, etc. of the detenu and such of those matters as are relevant in the context of the informant must be enquired into and carefully examined by the detaining authority with a view to satisfying itself that the alleged apprehension is not imaginary or fanciful or that it is not merely an empty excuse invented by the informant, inter alie, to protect himself against the falsity of his version being exposed by an effective explanation of the detenu or to hide his own involvement or to conceal his enmity with the detenu. In this regard, decisions in the case of Kajalben G. Sindhi Vs. Commissioner of Police, Ahmedabad, reported in 2000 (2) GLR 1296 and Israil @ Israr Pahelvan Nazirahmed Shaikh Vs. State of Gujarat - 2001 (1) GLR 306 can be profitably be employed.

5.1 In order to meet with this requirement, the detaining authority would be required to undertake a further exercise in addition to examining the anonymous witnesses. There is nothing to indicate that such an exercise is undertaken. A witness who has stated something before the sponsoring authority is bound to stick to his version before the detaining authority when he is summoned for verification, but what is stated by him is correct and genuine or not can be tested only after his version is cross-checked through other sources by undertaking further exercise. That having not been done, the subjective satisfaction cannot be said to have been recorded on the basis of any material and therefore, there is improper exercise of power under Section 9(2) of the PASA Act.

6. So far as the registered offences are concerned, they relate to 21st of Nov. 2000, 25th March, 2001 and 14th April, 2001. The order is passed on 26th July, 2001 and as such the live-link between the activity and the order can be considered to have snapped as the order is passed after more than 3 months. The satisfaction of the authority about continuation of illegal activity by the detenu therefore cannot be considered as genuine particularly when the statements cannot be relied upon for the reasons discussed above.

7. For the reasons stated hereinabove, the petition deserves to be allowed and the same is allowed. Order of detention dated 26.7.2001 passed by the Commissioner of

Police, Ahmedabad City is quashed and set aside. Detenu Parul @ Parvatiben widow of Ambalal Maganbhai Mena (Lodha) be released from detention forthwith, if not required in any other case. Rule made absolute. No costs. Direct service permitted.

(A.L.Dave,J.)

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